UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UMG RECORDINGS, INC., ET AL.,

Plaintiffs,

v. 24 CV 04777

UNCHARTED LABS, INC., ET AL.,

Defendants.

Argument

----------x

New York, N.Y.
August 21, 2024
11:00 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

HUESTON HENNIGAN, LLP
Attorneys for Plaintiffs
BY: MOEZ M. KABA
ALEX PERRY
MARIAH RIVERA

LATHAN & WATKINS
Attorney for Defendants
BY: ANDREW GASS

QUINN EMANUEL
Attorney for Defendants
BY: TODD STEVEN ANTEN

(Case called.)

THE DEPUTY CLERK: Counsel, please state your appearances for the record.

MR. KABA: Good morning, your Honor. Moez Kaba, of Hueston Hennigan, and I'm joined by my colleagues Mariah Rivera and Alex Perry on behalf of plaintiffs.

THE COURT: How do you do?

MR. GASS: Good morning, your Honor. Andy Gass from Latham & Watkins on behalf of defendants. I'm here with co-counsel from Quinn Emanuel, Todd Anten. And I'd like to introduce your Honor to Andrew Sanchez, one of the co-founders of Udio and its chief operating officer here in the front row.

THE COURT: How do you do?

Checking on your lawyers?

MR. SANCHEZ: Yes, indeed.

THE COURT: So we begin. Why don't you tell me about the case, Mr. Kaba.

MR. KABA: Sure, your Honor.

THE COURT: If you don't mind going to the podium, that would be good.

MR. KABA: Yes. Absolutely.

Your Honor, the defendant, Uncharted Labs, or what's more commonly referred to as Udio, is an artificial intelligence company that, in a nutshell, you can go onto, type a prompt or a command, and it will spit out a song recording

that Uncharted Labs or Udio then allows users, who -- some of whom get this service for free, some of whom pay, to use and to put out in the marketplace we allege as a competitor to our clients.

THE COURT: One can create a song instructing artificial intelligence.

MR. KABA: That's exactly right, with a prompt: Folksy, love song.

THE COURT: What kind of prompt do you have to give it?

MR. KABA: As I'm describing now. So you would be able to go in and type in, I want a folksy love song, teenage angst, roughly. You can get more specific. You can get less specific. You could, in some instances, as we were able to determine from our complaint, you could actually have very specific requests for a particular type of vocal presentation, which we allege and, frankly, we may end up talking about, defendants effectively have admitted already, the way they have trained their model to be able to spit out these recordings, these sound recordings -- so a little bit unlike OpenAI, where it's a text response, this is actually sound recordings and corresponding lyrics that gets spat out from Udio upon the entry of this prompt.

THE COURT: Let's say you want a love song, unrequited love, suitable for a late teenager. Is that enough of an

instruction or do you have to do more?

MR. KABA: That may be enough of an instruction to get something, and you could refine it and add more detail or less detail to it.

THE COURT: For example, in the style of Frank Sinatra.

MR. KABA: Exactly. Yes. That you would be able to get even a more specific output.

At this point in the case, though, your Honor, it's an important I think framing point. My clients are some of the largest record and music companies in the world that own the copyrights to a vast library of songs. Udio has trained its model using our copyrighted songs.

THE COURT: How do you know that?

MR. KABA: Because, one, they've said as much in their response to this complaint. They have said -- I can quote for the Court. It's docket 26. They said, "the many recordings that Udio's model was trained on presumably included recordings whose rights are owned by the plaintiffs in this case." That's on page 8.

They go on to say on pages 9 and 10, "irrespective of whether UMG, one of the plaintiffs in this case, particular version of "My Way" was in Udio's training data, many other UMG recordings probably were."

And then in our complaint, your Honor, we actually lay

out in quite painstaking detail a number of tests that we did, where we went on, we got these prompts, we used these prompts, and we got sound recordings that sound -- and we've even provided the Court with a thumb drive of the actual recordings that are indistinguishable, indistinguishable from popular well-known recording artists and popular less known recording artists.

An example we have in our complaint at page 56 -- I'm sorry, paragraph 56, is Green Day's version of "American Idiot." At paragraph 55, it's the Temptations version of "My Girl." And the Court can hear the record --

THE COURT: What?

MR. KABA: The Temptations, "My Girl." That's another example that was -- where we can determine that the output from Udio is almost identical to the copyrighted recordings, including in the vocal match of the artificial intelligence singer.

So we lay out in painstaking detail how we can determine that they were trained on our copyrighted sound recordings in their answer to our complaint, and that's what's happened here. They've answered -- they have not moved. As I just quoted, they effectively admit that they copied and used our recordings for purposes of training their model.

And so their argument, at least as we understand it, is in large part -- I understand they believe they have other

arguments as well, in large part that this is fair use. That is, the way that they have trained their models to mimic and learn from and then use our copyrighted works was fair use, and the Court need look no further than, again, their answering statement. The very -- the preliminary statement says, "under long-standing doctrine, what Udio has done, use existing sound recordings as data to mine and analyze for the purpose of identifying patterns and the sound of various musical styles, all to enable people to make their own creations is quintessential fair use under copyright law."

And so --

THE COURT: So your notion is fair use is the real and central issue of this case?

MR. KABA: Your Honor, my notion and I think affirmed by their answer were --

THE COURT: I mean, we're not arguing that.

MR. KABA: Yeah.

THE COURT: I think I have enough of an understanding from what you said. Let me hear from defendants' perspective.

Mr. Gass.

MR. GASS: Thank you, your Honor.

Mr. Kaba's articulation of what the technology is and how it works was partially correct. Let me clarify and correct a few elements of it.

First of all, it is not intended to allow anyone to go

on and generate a rendition of "My Girl" from the Temptations' version. There is no reason anyone would do that. You can perfectly well go listen to "My Girl" on hundreds of places on the internet.

What Udio is is a tool to allow people to create new musical creations. No one would invest the time or energy to do what this company does to create some sort of on demand library of recordings that could more easily be gotten elsewhere. What people actually do with the tool, what it's intended for is to allow you to go on and say, I'm going to make a bespoke love song for my wife in the style of a crooner or something like that, or for a professional musician to go on and have some prompts to aid them in their own process.

Contrary to Mr. Kaba's suggestion, you can't ask it, in a way that it will respond to directly, to create a Frank Sinatra version of it. The product has specifically been built to say, no, we're not going to give you Frank Sinatra's voice. We'll try to give you something that's broadly in the same style, because a style, the sound of a 1960s crooner, the sound of punk music, the sound of rap music is not something anyone owns the rights in. These are part of our shared cultural heritage. And fundamentally what Udio does --

THE COURT: That means you agree with Mr. Kaba that fair use is going to be the central issue of the case?

MR. GASS: It is one central issue in the case.

THE COURT: What's another?

MR. GASS: Another central issue in the case is the plaintiffs' own efforts to hobble this technology before it can get out of the starting gate, and that is --

THE COURT: Plaintiffs' efforts to what?

MR. GASS: Hobble this technology before it gets out of the starting gate.

THE COURT: How do you hobble technology?

MR. GASS: They have been going around to licensees of theirs in other areas and saying, if you want the rights to my catalog of sound recordings, you may not have anything to do with AI companies at all. They, we believe, have, in lieu of engaging in commercial discussions with AI companies like --

THE COURT: So you think this is misuse?

MR. GASS: Correct. And moreover, your Honor, importantly --

THE COURT: Do you agree that there's copying?

MR. GASS: Yes, your Honor, there was -- the way that the technology was developed -- you can't look at two recordings or six recordings or a thousand recordings. In order to study the constitutive elements of what a recording in a given genre sounds like, you need millions of these recordings.

So we agree it is quite likely, as we were forthright in our answer, that of the millions of recordings that were

used, presumably the plaintiffs at least purport to own some of them. There is, I will add, a novel issue of ownership that plaintiffs' allied that I want to focus your Honor's attention on.

THE COURT: So you are synthesizing copyrighted and uncopyrighted work?

MR. GASS: Correct. Exactly.

THE COURT: If there is an infringement, how does one fix damages?

MR. GASS: How does one fix damages? I'm going to take issue for a moment with the suggestion of synthesis, because what is happening here is not --

THE COURT: Not synthesis --

MR. GASS: Not that Udio takes a snippet --

THE COURT: I'll get a word that you will like. Transformation.

MR. GASS: Right. So if there is infringement, then the work is infringing and damages are available.

THE COURT: If I were to try to limit the scope of discovery, what issues would you like to have discovered?

MR. GASS: There are two principal issues that we would like discovery into: One, are the plaintiffs' licensing practices, and both vis-a-vis other parties against whom they have said, you may not deal with AI companies if you want to have our catalog, and with respect to startups like Udio, who

have approached them to discuss commercial transactions -- so we would like to understand what have they done. Have they agreed with each other not to engage? That's topic one.

Topic two, we would like discovery particularly for the older recordings in suit into whether the plaintiffs can actually prove they owned these works. Those works are governed by a different regime, not the standard copyright regime.

THE COURT: Tell me about that.

MR. GASS: Until very recently, sound recordings made before year 1972 were governed not by federal law but by state law. In 2018, Congress --

THE COURT: Why was that?

MR. GASS: Ah. Great question, your Honor.

So, historically, there was no federal copyright protection for sound recordings at all. You could get protection for the underlying notes and lyrics, but from the early days of the technology, Edison and onward, Congress didn't recognize the recorded rendition of a song as something that independent America --

THE COURT: So the composer and possibly the arranger would have a copyright, but not the artist --

MR. GASS: Correct, but the performing artist would not. So for many decades, the performing artists went to Congress and said, this is an outrage; every time the song gets

played on the radio, the song writer gets paid but I do not. Congress, you need to fix this.

THE COURT: So Rudy Vallee never got any copyright income.

MR. GASS: Correct, he didn't, at the time.

THE COURT: Early Sinatra, also not --

MR. GASS: Exactly. Those recordings were protected, if at all, under state law, not federal law. In 1971 of all years --

THE COURT: Unfair competition laws.

MR. GASS: Correct, unfair competition laws. And even state copyright laws. There was a tremendous litigation about those laws about four or five years ago. That's been resolved now.

In 1971, Congress brokered a compromise and agreed that going forward, for all sound recordings made, believe it or not, on or after February 15, 1972, there would be federal copyright protection for those going forward, subject to a variety of caveats and restrictions, one of which Mr. Kaba failed to mention, which is that the copyright protection for sound recordings is unique in all of copyright law in that you can only infringe the right in a sound recording but actually reprizing the actual sounds of the recording and duplicating it.

So the idea was to get a record --

THE COURT: The notion having been fixed, is that it?

MR. GASS: Yes. Exactly. You can only infringe the rights in recordings by reprizing the actually sounds that were fixed. Your Honor is exactly right. That's the word.

You cannot infringe the rights and recording --

THE COURT: So is it the charge and your admission that lots of these fixed recordings that are subject to copyright protection are in your library?

MR. GASS: It's not a library, your Honor. Here's what it is. Many fixed recordings were used as part of a back end training process, invisible to the public, to teach the artificial intelligence what the sounds of music consist of. When an output is generated, it does not include any of the sounds of any of the works in that library, and, as a rule, 100 percent of those outputs are non-infringing. And that is an essential element of this case.

THE COURT: Is there any law on this?

MR. GASS: On which piece, your Honor?

THE COURT: On whether you can incorporate multiple copyrighted renditions as a base for teaching or creating a system of AI generation of music?

MR. GASS: There are about three dozen copyright infringement lawsuits currently pending in the federal courts throughout the United States. None of them has yet proceeded even to a summary judgment motion. And that, your Honor, is

part of --

THE COURT: Does the *Google* case have anything to do with making a library of every printed word, copyrighted and not copyrighted, a precedent --

MR. GASS: The *Google* case is highly relevant, because that case, along with countless others, stands for the proposition that it has never once in the history of copyright law in the United States been deemed actual infringement rather than fair use to use a copyrighted work as part of the back end technological process of creating something new, different, and non-infringing. It has never happened.

THE COURT: So *Google* stands for the proposition that it's fair use?

MR. GASS: Correct.

THE COURT: I take it that Mr. Kaba would say something different?

MR. GASS: One imagines.

THE COURT: What would you say?

You can say it from there. You can sit down.

MR. KABA: Your Honor, I would say *Google* does not -- *Google* may have stood for the proposition that it was fair use with respect to that particular set of facts. Here, if you analyze the four fair use factors, we have something quite different happening. But ultimately, your Honor, sort of to take it back to the point that we originally talked about, even

as we're discussing this now, I think what we are circling in on is the issue of fair use is going to be the threshold if not dispositive issue in the case, and should we not, in the interest of efficiency, get to --

THE COURT: Tell me what the relevance of *Google* is.

MR. KABA: Your Honor, I think *Google* stands for the proposition that within that context, in the way that Google was providing the service that it was providing, that that use may not have been infringing. Here, of course, we have a plainly commercial application of plainly commercial application of -- plainly commercial use of our works. That's just fair use factor number one. We have --

THE COURT: So let me understand it.

MR. KABA: Yes.

THE COURT: In order for me to reach the issue of fair use, do I have to understand the entire mechanics of this business?

MR. KABA: Is that directed to me, your Honor?

THE COURT: Yes.

MR. KABA: I think you have to understand some of the mechanics of this business certainly. I think the way that they are using the works --

THE COURT: You're saying that -- I can foresee that if I do what you want me to do and limit discovery to fair use, I'd have to make rulings every other day.

MR. KABA: I don't believe that's true, your Honor.

THE COURT: I do, and so I won't do it.

MR. KABA: I understand your position. Obviously if the Court's mind is set on it, then so be it.

THE COURT: I'm not set on anything. I've never had this experience before, but I have tried to limit the scope of discovery to my regret. In the 9/11 cases, there was an overriding issue having to do with whether there was a safe zone for the way that workers were working in the recovery.

MR. KABA: I recall that.

THE COURT: Whether that was a protectable warranty for example. Not -- warranty is a bad word, but protectable scope. We limited discovery to that. I was making rulings every other day in what was permissible and what was not. It's not a good use of time. It's not efficient. In order for me to make any intelligent rulings, I'll need a longer perspective than just an abstract issue of fair use.

So we're not going to have a limitation in discovery.

MR. KABA: I understand. And just so -- your Honor, our proposal was not to cut off discovery forever, but to try to stagger it. But I understand the Court's position that it's hard to delineate the lines between fair use for the Court or not, or at least -- the Court will be dragged into discovery disputes on whether the parties agree --

THE COURT: Let me put another question to you. If

you want to prove infringement, do you have to prove each and every song that may have been used as a basis for training?

MR. KABA: I think the infringement would be established for each song. We don't know each and every song yet. That's information that Udio possesses.

THE COURT: That will be the result of endless discovery. What compass can we put on this case?

MR. KABA: Well, I guess, your Honor, I'm struggling a little bit about -- I mean, part of why we were trying to establish the legal principle that both sides seem to be debating is you can make the determination based on the more limited set of information about the fact that they are using copyrighted sound recording to train, they are using it for commercial purposes knowingly --

THE COURT: I would need to know just how that happens.

MR. KABA: I think that articulation of the way that their model works is not going to be -- I don't think it's going to require endless amounts of discovery. They have a model. They know how it works. They know what they put into it. They know how different copyrighted sound recordings are weighted in their model. And I think those sorts of things could probably be determined by a pretty limited set of discovery and likely one or two depositions on just -- to answer your Honor's point.

THE COURT: Experience teaches me not to trust that mode of operation.

MR. KABA: I understand and respect that, your Honor.

THE COURT: But let's say I find that fair use is not appropriate, and I go on to the issue of infringement. What is infringed?

MR. KABA: It is going to be the specific works that are being used in their model.

THE COURT: Well, they're telling me that everything that they could digest is being used, that there's no limit to what they want to put into their teaching library.

MR. KABA: Yeah. So we don't know exactly what they're doing yet, your Honor, but --

THE COURT: We're going to have to find out. But let's say that's the case. Let's say that we find that there's 10,000 copyrighted works in their library of teaching materials. What then?

Do you amend to include each and every one? Do you have to amend to include the songs that are infringed? What kind of complaint would you have?

MR. KABA: Well, the current complaint we have lists many of the recordings, and, yes, we would include -- for purposes of obtaining damages, your Honor, we would include every one of the sound recordings that we contend infringed, so that we could get appropriate damages on it.

THE COURT: Let's suppose there are 10,000.

MR. KABA: Presumably, your Honor, we could serve a discovery response identifying our ownership in those 10,000 recordings.

THE COURT: Yes. With a lot of effort, you could probably do that. But then let's suppose that one detected song is used just a tiny bit, and another one goes through several bars. I don't know the musical terms, but extensively, one minutely, another extensively, there's a difference in infringement damages. So I don't know how to think of this complaint.

MR. KABA: Well, I'm not going to sort of beat the dead horse, your Honor, but if the Court determines that there is no fair use, there is a real problem here with Udio's model and the way they're approaching things.

And, yes, your Honor I think is pointing out that the extent of the infringement for a particular recording may, in fact, impact the damages, not the propriety of their using it, but the damages to which we would be entitled for its use. But of course, your Honor, we don't yet know the answer to that. We don't know how their model spits -- how their model weighs the different copyrighted recordings. It may be in one instance, you're right, they would only take a portion of a copyrighted song recording. In another instance, responsive to another prompt, it may be a much larger portion. And that kind

of understanding of their model is something, unfortunately, I can't speak to yet, but --

THE COURT: It's different, song to song.

MR. KABA: It very well may, your Honor, because it depends on how it's trained, how its model is trained.

THE COURT: Creating a case that is impossible.

MR. KABA: I don't think it's going to be im --

THE COURT: Unless it's an injunction case. I could see a case in equity, but I don't understand how this could be a case in damages that any single judge could deal with.

MR. KABA: Well, your Honor, I think certainly our case seeks both injunction to prevent this infringement and, again, which is why we were trying to advance what we thought was a threshold issue early, and then move on to the more involved potentially portion of the case where we are seeking damages, but --

THE COURT: We have one case. It depends how you frame the case. The way you're framing the case now is a case for damages. You're asking for a jury trial.

MR. KABA: We're asking for both injunctive relief and damages.

THE COURT: Which makes it a jury trial.

MR. KABA: Yes, your Honor. I understand that. But we believe under the law we're entitled, of course, to the equitable relief and the damages.

THE COURT: I understand that. I'm not trying to think through what I -- what a result should be. I don't know what a result should be. I'm just imagining the types of difficulties that I'll be confronted with in this case.

Why do you want to amend the complaint? Why do you want leave to amend the complaint?

MR. KABA: For a couple of purposes, your Honor. One, we -- as the Court has already identified, we don't know the full scope of their use. What they have admitted is they do use --

THE COURT: So potentially you're going to amend to include every song that's protected?

MR. KABA: If we're able to ascertain that, we may.

THE COURT: Are you only Universal or you're Warner, also? How many companies are you --

MR. KABA: We've categorized them into three primary groups of affiliated record labels within each group.

THE COURT: Just take the name of the overall group.

MR. KABA: UMG, Sony and Warner.

THE COURT: How many records, for want of a better word, are included? I mean, we couldn't count them.

MR. KABA: Certainly my clients own a substantial portion, if not the vast majority of the rights to sound recordings that we believe the defendant is copying.

THE COURT: In discovery, Mr. Gass, there's going to

be a discovery to understand your method.

Is there sensitivity from a competitive point of view?

MR. GASS: There is heavy sensitivity, your Honor.

THE COURT: Tell me about that.

MR. GASS: Well, there are quite a few AI companies out there, and each of them use their own proprietary approach to developing their model, even selecting what data to use to train on.

THE COURT: What kind of protective order would we need?

MR. GASS: I think, your Honor, probably a two-tier approach makes sense, one for confidential information accessible to the other side and one for highly confidential attorneys eyes only. That's what we would suggest.

THE COURT: I'm sure the inside counsel of Sony, Universal, and Warner would want to.

MR. GASS: An appropriate representative or two from each would be fine of course.

THE COURT: Would be appropriate?

MR. GASS: Yes.

THE COURT: Yes. I should tell you that over 25 years ago when I was a lawyer I represented Warner in some matters.

MR. GASS: Was it a positive experience, your Honor?

THE COURT: Yes. They're a very good client.

MR. GASS: I trust that that will not --

THE COURT: They were satisfied with my services and they paid their bills on time.

MR. KABA: Well, I'm hoping for the same, your Honor.

MR. GASS: But, your Honor, I trust that that will not taint your perspective on this occasion.

THE COURT: No, it will not. I don't think anybody's around who I worked with. I'll disclose in a letter.

Okay. So let's see if we can muddle through, break this down first.

Are there going to be any motions?

MR. GASS: No motions on the pleading I don't believe.

THE COURT: Mr. Kaba?

MR. KABA: We're not anticipating -- I mean, they've answered.

THE COURT: First question, if there's no limit, no scope limit, how much time do you think you will need for discovery, Mr. Kaba?

MR. KABA: Your Honor, we will propose -- if you'd give me just a moment to reflect a little bit.

THE COURT: Let me soften the question. Written discovery, Rule 33 and 34. You have a lot to produce, both sides. You're going to be overwhelming each other with production.

MR. KABA: So plaintiffs -- obviously we propose an earlier schedule. Defendants propose April 10th for --

THE COURT: Well, that was all -- these are both fictitious dates, so let try to break this down. First I want to get agreement on the ground rules. So you should get agreement on the ground rules, and I should put in a date for a conference, so I can resolve disputes. Then you'll know how long you'll need for your written discovery and we'll assign a date. So this is not a case I think that's suitable for a case management plan. I think it needs intensive conferencing on my part, so we can move as expeditiously as possible with as few disputes as possible.

MR. KABA: What would the Court like to see in the parties' --

THE COURT: I'd want to react to you. The two of you, why don't you huddle and come up with a date that would be designed to get a protective order, get all the search definitions that you need, and then you can propose dates for exchange and so on.

If I gave you a month to do this, is that sufficient?

MR. GASS: Yes, your Honor.

THE COURT: Is that reasonable?

MR. KABA: Yes, your Honor.

We'll attempt to get you a protective order draft and ESI protocol as quickly as we can, certainly within a month.

THE COURT: Well, I have a conference and -- well, I guess there could be agreement, but let's --

MR. KABA: Hope springs eternal.

THE COURT: How about in the afternoon of September 25? Anybody have vacation schedules that will --

MR. GASS: No vacation, your Honor. I have a mediation scheduled in another matter with --

THE COURT: Let's go off the record while we play around with dates.

(Discussion off the record.)

THE COURT: Let's go back on the record now, please.

What's the pace of the other cases?

MR. GASS: There are many of them.

THE COURT: Are you involved in all of them?

MR. GASS: Many of them, yes.

MR. KABA: So our clients -- there's two of these music generating AI companies. Mr. Gass represents both of them, Udio in this case and *Suno*, which is another case pending in the District of Massachusetts. So we have brought this case in the Southern District, and then the case against Suno in the District of Massachusetts, both filed on the same day. We expect they will both proceed hopefully fairly promptly, and it is --

THE COURT: Do we need to take into consideration the discovery in the other case?

MR. GASS: No, your Honor. These are different defendants, different companies, wholly different situations.

I took your Honor to be asking about the other cases involving generative AI companies --

THE COURT: I don't know what questions to ask --

MR. GASS: -- OpenAI, Anthropic, things like that. There's a large case here pending before Judge Stein where the New York Times has sued OpenAI. And those cases are proceeding slowly. There the schedules were originally set to do fact discovery in something like nine months, but the parties just stipulated to extend it 90 days because it was proving unworkable. So I think the approach here makes a lot of sense.

THE COURT: Thank you very much.

MR. KABA: Thank you for your time, your Honor.

THE COURT: Have a good rest of the summer.

MR. GASS: You as well.

(Adjourned)